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# In the Supreme Court of the United States

OCTOBER TERM, 1959

HAROLD WILLEY, PETITIONER

*v.*

REVIEW COMMITTEE, VENUE VII, COMMODITY STABILIZATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, SITTING IN THE CITY OF WAHOO, NEBRASKA, IN AND FOR SAUNDERS COUNTY

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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### OPINIONS BELOW

The opinion of the United States District Court for the District of Nebraska is unreported. The opinion of the United States Court of Appeals for the Eighth Circuit (Pet. App. 1a–21a) is reported at 275 F. 2d 264.

### JURISDICTION

The judgment of the court of appeals was entered on February 18, 1960 (Pet. App. 21a–22a). The petition for a writ of certiorari was filed on April 29, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether the Secretary of Agriculture's regulations pertaining to farm acreage allotments for the 1959 crop of wheat, 23 F.R. 1672, 7 C.F.R. (1959 Supp.) 728.911 *et seq.*, issued pursuant to the Agricultural Adjustment Act of 1938, 52 Stat. 31, as amended, 7 U.S.C. 1281 *et seq.*, prescribe reasonable adjustments for crop-rotation practices.

2. Whether Congress intended local agriculture review committees, reviewing assignments of acreage allotments pursuant to 7 U.S.C. 1363, to be bound by regulations issued by the Secretary pursuant to statutory authority.

## STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the Agricultural Adjustment Act of 1938, 52 Stat. 31, as amended, 7 U.S.C. 1281 *et seq.*, and the Secretary of Agriculture's regulations pertaining to farm acreage allotments for the 1959 crop of wheat, 23 F.R. 1672, 7 C.F.R. (1959 Supp.) 728.911 *et seq.*, are set forth in the Appendix to the petition, pp. 22a–38a.

## STATEMENT

This is an action for judicial review of an agriculture review committee's decision, affirming the 1959 base wheat acreage and wheat acreage allotment assigned to petitioner's farm pursuant to the Agricultural Adjustment Act of 1938, 52 Stat. 31, as amended, 7 U.S.C. 1281 *et seq.* The relevant facts and regulatory provisions may be stated as follows:

A. The Agricultural Adjustment Act of 1938 directs the Secretary of Agriculture annually to pro-

claim the "national acreage allotment" for the following year's crop of wheat. 7 U.S.C. 1332. The Act provides for the apportionment of this allotment among the States, and of the state allotment among the respective counties. The county allotments "shall be apportioned by the Secretary, through the local committees, among the farms within the county on the basis of past acreage of wheat, tillable acres, crop-rotation practices, type of soil, and topography."[1] 7 U.S.C. 1334 (a), (b), (c). In order to implement these provisions, the Secretary must "prescribe such regulations as are necessary for the enforcement of [the Act]" (7 U.S.C. 1375).

For the crop year 1959, the Secretary proclaimed a national acreage allotment of wheat, announced the allocation of this allotment among the States and their respective counties, and issued regulations governing the apportionment of the county allotment among individual farms.[2] These regulations require the local county committees to determine a 1959 "base

[1] This distribution is made by county committees composed of local farmers. 7 U.S.C. 1334(c), 1388.

The individual farm's wheat acreage allotment is a key factor in the statutory scheme of limiting wheat production. In years when marketing quotas are in effect (7 U.S.C. 1335(a), 1336, 1340(1)), a monetary penalty is payable on surplus production exceeding the "farm marketing quota." This quota, in brief, is the production of the acreage planted to wheat, less the production of the acreage planted to wheat which is in excess of the farm's acreage allotment. 7 U.S.C. 1340 (1), (2). Similarly, wheat price supports are available only to "cooperators." 7 U.S.C. 1441. A "cooperator" is one who does not knowingly plant in excess of his farm acreage allotment. 7 U.S.C. 1428(b).

[2] 7 C.F.R. (1959 Supp.) 728.903, 728.907, 728.911 *et seq.*

acreage" for each farm. 7 C.F.R. (1959 Supp.) 728.917. The county committees are then directed to apportion the county acreage allotment, less certain reserves, "pro rata among all farms within the county on the basis of the base acreages * * *." 7 C.F.R. (1959 Supp.) 728.918.

In determining base acreages for 1959, the county committees are required to establish an "historical average acreage," which is, in general terms, the average of the wheat acreage seeded in each of the years 1954, 1955, 1956 and 1957.[3] 7 C.F.R. 728.917(b), 728.911(m). The committee is permitted to adjust the historical average acreage if it determines that one or more of the years in the base period 1954–1957 should be eliminated for one of five specified reasons. Two of these reasons, numbers 4 and 5, relate to crop rotation practices (involved here)—that the wheat acreage for that year is:

> (iv) No longer representative because of a change in operations which results in a substantial change in the established crop-rotation system for the farm.
>
> (v) Not appropriate for 1959 because of a definitely established crop-rotation system being carried out on the farm. [7 C.F.R. (1959 Supp.) 728.917(c)(1) (iv), (v)][4]

If the committee eliminates any year from the base period, the average of the remaining uneliminated

[3] In those years in which the farmer complied with his acreage allotment, a figure approximating his base acreage rather than his actual acreage is used to compute his "historical average acreage." 7 C.F.R. (1959 Supp.) 728.917(b).

[4] 7 C.F.R. (1959 Supp.) 728.917(c)(1) (iv) and (v) will be called "Reason 4" and "Reason 5."

years constitutes the adjusted average acreage. If all four years are eliminated, the adjusted average acreage is zero. 7 C.F.R. (1959 Supp.) 728.917(c)(2). If no further adjustment is made, the adjusted average acreage is the 1959 base acreage. 7 C.F.R. (1959 Supp.) 728.917(e).

However, if a farm's adjusted average acreage is zero because all four years of the base period are eliminated, the county committee may adjust it further so as to make the acreage comparable to that of other similar farms. If all of the base years are eliminated for Reason 5, the adjusted average acreage may be raised as high as the farm's total acreage of cropland. 7 C.F.R. (1959 Supp.) 728.917(c)(3)(i). But if at least one of the years is eliminated for Reason 4, the adjusted average acreage may not be raised higher than the "acreage indicated by cropland," which is the acreage obtained when a farm's cropland acreage is multiplied by the ratio of the community's historical wheat acreage to the community's total cropland acreage. *Ibid.*; 7 C.F.R. (1959 Supp.) 728.911(g). If the adjusted average acreage is thus further adjusted, the resulting figure is the 1959 base acreage. 7 C.F.R. (1959 Supp.) 728.917(e).

B. Petitioner operates a 320-acre farm in Nebraska, of which 285 acres are used as cropland (R. 56).[3] Since 1951, he has planted varying amounts of wheat and alfalfa, together with a number of other crops. Starting in 1956, he ceased growing any crops other than wheat and alfalfa, and since that year has de-

[3] "R." refers to the printed record in the court of appeals.

voted most of his cropland to alfalfa (R. 23–24). Petitioner claims that alfalfa is his principal crop and that wheat is grown only for rotation purposes (R. 2–3).

For the crop year 1959, the county committee assigned an acreage allotment of 44.3 acres to petitioner's farm (R. 15). The committee reached this figure by first computing an historical average acreage for the base period for petitioner's farm. Since the relevant wheat acreages were 35 acres in 1954, 45 acres in 1955, 65 acres in 1956, and 33 acres in 1957, the farm's historical average acreage was 44.5 acres. The committee adjusted this figure for Reason 4, however, by eliminating the three lowest years, *i.e.*, 1954, 1955 and 1957. Because of this adjustment, the base acreage was 65 acres.[6] Application of the county factor to this acreage resulted in the 1959 allotment of 44.3 acres.

Petitioner appealed this decision to the local review committee[7] on the ground that "insufficient consideration" had been given to his particular crop-rotation system. He sought a base acreage of 125 acres[8] (R. 16–17). At the hearing before the review committee, petitioner stated that he would like to plow up his alfalfa every five or six years and then grow wheat in its place for three years.[9] He testified that,

[6] If the adjustment had not been made, the base acreage would have been 44.5 and the acreage allotment would have been 30.3.

[7] Provision for such review is made by 7 U.S.C. 1363.

[8] A base acreage of 125 acres would result in an acreage allotment for petitioner's farm of about 85 acres.

[9] Alfalfa has deep roots which dehydrate the soil. Consequently, it should be plowed up every few years and rotated

"but for the allotment system," he would have about one-third of his acreage (95 acres) planted in wheat and two-thirds in alfalfa at all times (R. 35–37). The review committee denied petitioner's application for an increase in base acreage (R. 57–60).

Petitioner then brought this suit for review of that decision under 7 U.S.C. 1365.[10] He contended that the committee should have eliminated all the years in the base period for Reason 5 (rather than Reason 4), and then should have given his farm a base acreage of 125. The district court, agreeing with the review committee that Reason 5 was inapplicable, nevertheless reversed the committee and remanded the cause to the committee with directions to eliminate *all* the base years for Reason 4 and then to determine the base acreage for petitioner's farm on the basis "not of his crop history as was done, but of his long range crop rotation system as instituted and now established on his farm" (R. 12). The district court did not refer to the "acreage indicated by cropland" provision, which imposes a ceiling on adjustments where all base years are eliminated for Reason 4 (*supra*, p. 5). The "acreage indicated by cropland" for petitioner's farm is 15 acres (R. 59).

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with a crop which requires little water and will therefore permit moisture to penetrate to the subsoil. Wheat is a good rotation crop for this purpose (R. 36, 48–49).

[10] In such proceedings "review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence shall be conclusive." 7 U.S.C. 1366.

The court of appeals reversed the district court and affirmed the review committee's decision. It held, first, that the Secretary's 1959 regulations—including the "acreage indicated by cropland" limitation—"represent in their entirety a reasoned and reasonable administrative effort to implement the statute fairly" (Pet. App. 16a). Second, the court determined that the review committee was correct in rejecting the applicability of Reason 5, and in eliminating three base years for Reason 4. While agreeing with the review committee that the year 1956 need not be eliminated, the court noted the "practical result" that the (Pet. App. 19a)

> retention of 1956 alone gave plaintiff a greater average base than would have been the case if any other year or years of the base period had been retained, or if all the years had been eliminated under Reason (iv), for then the 15 acre maximum under "acreage indicated by crop land" would apply. One may, therefore, conclude that the committees were perhaps over generous to the plaintiff. The defendant makes no objection to the retention of 1956 with consequent greater average acreage, and we, therefore, do not upset its retention.

## ARGUMENT

Petitioner's position is that the Secretary's regulations are not sufficiently flexible to allow full accommodation for the particular crop-rotation situation on his farm for the 1959 crop year.[11] The controversy

[11] Petitioner no longer challenges the review committee's decision as being at variance with the regulations. He concedes, in effect, that his farm's base years could not be eliminated for

thus centers on the circumstances of this one case and has no broad or general importance. Moreover, interpretation of the regulations applicable in 1959 would have little, if any, future impact, since the 1960 regulations relating to adjustments for crop-rotation practices are substantially different. 24 F.R. 2475, 2477. In any case, the 1959 regulations—which were fully reviewed and sustained by the court of appeals below—are based on reasonable interpretations of the governing Act and are entirely valid. There is therefore no occasion for review by this Court.

1. In 7 U.S.C. 1334(c), Congress directed the Secretary to apportion county allotments on the basis of, *inter alia*, "past acreage of wheat" and "crop-rotation practices." Consistently with these standards, the Secretary's 1959 regulations prescribe a formula which is based largely on crop history, but which allows adjustments where the actual history is inappropriate because of crop-rotation practices. 7 C.F.R. (1959 Supp.) 728.917. These regulations must be respected unless "plainly and palpably inconsistent with" the statute. *Boske* v. *Comingore*, 177 U.S. 459, 470; *Commissioner* v. *South Texas Lumber Co.*, 333 U.S. 496, 501.[12]

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Reason 5, as interpreted by the Department of Agriculture (Pet. 16). And he realizes that if *all* the base years had been eliminated for Reason 4, his base acreage—under the regulations—could not have exceeded 15 acres, the "acreage indicated by cropland" for his farm (see *supra*, pp. 5, 7).

[12] See also *Rigby* v. *Rasmussen*, 275 F. 2d 861, 863 (C.A. 10); *Gardner* v. *United States*, 239 F. 2d 234, 237 (C.A. 5); *Moe* v. *Wesen*, 172 F. Supp. 259, 262 (D. Mont.); *Luke* v. *Review Committee*, 155 F. Supp. 719, 723 (W.D. La.); and *Edwards* v. *Owens*, 137 F. Supp. 63, 65 (E.D. Mo.). In all of these

If a farm's wheat history during the base period is "not appropriate for 1959 because of a definitely established crop rotation system being carried out on the farm", adjustment may be made for Reason 5, *supra*, p. 4. As petitioner acknowledges (R. 10; Pet. 7–8, 16), this provision covers farms on which there is a "substantial change in the acreage planted to wheat from year to year," *i.e.*, an "odd" and "even" wheat rotation system. It does not cover farms where, as in petitioner's proposal, the total annual wheat acreage of the farm is substantially constant (1959 Wheat Allotment County Handbook, par. 25C.3; R. 10–11, 41; Pet. App. 10a, 16a). In the other situation where past history may be inappropriate—*i.e.*, where, as here, there is a "change in operations which results in a substantial change [for 1959] in the established crop rotation system for the farm"—adjustment may be made for Reason 4, *supra*, p. 4 (R. 9–10). Thus, the two provisions are complementary. Reason 5 protects the farmer whose previously established crop-rotation system results in an historical average acreage for 1959 which is unduly low, and Reason 4 protects the farmer who, by inaugurating for 1959 a substantial change in his crop-rotation system, might otherwise be prejudiced by a low historical average based on his past rotation program. In this fashion the Secretary has sought to effectuate the congressional purpose that farm acreage allotments be based on both "past acreage of wheat" and "crop-rotation practices."

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cases, regulations issued by the Secretary under this Act were held valid as not "plainly and palpably" conflicting with the statute.

Petitioner challenges the "acreage indicated by cropland" restriction on upward adjustments where all the base years for a farm are eliminated for Reason 4. This ceiling assures that, since the crop history of such a farm is altogether ignored, the base acreage will not be set above the proportion of cropland historically devoted to wheat by all the other farms in the community. In keeping with the apparent Congressional decision that "each producer should be permitted to retain more or less the share of the market which he had acquired in the past" (*Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U.S. 604, 612), the limitation is intended to protect the allotments of other farms in the county from sharp reduction due to the increased requirements of a farmer who changes his rotation system by devoting a larger proportion of land to wheat. As stated in *Secretary of Agriculture* v. *Central Roig Refining Co., supra,* p. 614, it is not for the Court to reject the balance thus struck by the Secretary "on consideration of all the factors unless [it] can say that his judgment is not one that a fair-minded tribunal with specialized knowledge could have reached."

2. Petitioner also contends that Congress intended crop-rotation matters to be "adjudicated at the local level" and that the Secretary "may not create barriers [through his regulations] to an adjudication of a crop-rotation system on the merits" (Pet. 18–19). The error in this position is evident from the statutory language indicating that county allotments shall be apportioned among individual farms "*by the Sec-*

*retary,* through the local committees * * *" (7 U.S.C. 1334(c), emphasis added). The function of the review committee is to *review* the county committee's action; there is no suggestion in the statute that the review committees are not, or should not be, bound by the Secretary's regulations issued pursuant to statutory authority. 7 U.S.C. 1363, 1375(b). And even if petitioner were correct, he could not gain in this litigation because the review committee clearly indicated its own position, stating that (R. 59)

> [i]n review of the * * * facts and knowing that the allotment programs purpose was to control wheat production by each producer taking his fair share of any reduction needed, we * * * believe this farm has received fair consideration and allotted a higher base than the history justifies * * *.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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